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July 11, 2024

VIA ECF

Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*,
No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address issues raised in this litigation through mediation.

I. Background

I have continued to receive call and videoconference data from the parties. I also continue to be in communication with the Federal Defenders, Inc. ("Plaintiff") and their counsel, the government, and representatives of the Metropolitan Detention Center ("MDC") and Metropolitan Correctional Center ("MCC").¹

My communications with the Federal Defenders and the government focused on the following topics:

1. The current status of in-person legal visitation at the MDC.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC.

¹ I held joint mediation calls with the parties on June 25, July 2, and July 9, 2024. Magistrate Judge Peggy Kuo attended all three of these calls.

II. Telephonic Contact

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls are scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

According to information received from the parties, MDC scheduled 428 calls between June 13, 2024 and July 10, 2024. Of these 428 calls, 308 were completed,² 20 were attempted but not completed, eight were cancelled or rescheduled by the inmate's attorney, five were not completed because the inmate was on a different floor,³ four were not completed because the inmate refused the call, four were not completed because the inmate was in court, four were not completed because the inmate's attorney was "not following MDC rules and regulations," three were not completed because the MDC cancelled or rescheduled the call, three were not completed due to technical issues with the phone in SHU, two were not completed because the inmate had a legal visit, two were not completed because the inmate was not at the institution, one was not completed because the inmate had a social visit, one was not completed because the inmate had another call, one was not completed because the inmate was in the hospital, and one was not completed because an interpreter was not available.⁴ Finally, 14 calls were not completed for unknown reasons, and we are unaware of the outcome for 47 calls. We are working with the parties to gather more information about these calls.

Additionally, Federal Defenders report some technical issues over the past four weeks.

III. Videoconferencing

According to the information received from the parties, MDC scheduled 266 videoconferences between June 13, 2024 and July 10, 2024. Of these 266 VTCs, 184 were completed,⁵ five VTCs were completed as a call,⁶ four were attempted but not completed, seven were cancelled or rescheduled by the inmate's attorney, four were not completed because MDC cancelled or rescheduled the call,⁷ three were not completed because the inmate was in court, three were not completed because the inmate was not at the institution, and two were not completed because the inmate refused the VTC. Finally, 12 VTCs were not completed for unknown reasons,

² The Federal Defenders reported one of these calls as not completed.

³ MDC reported that one of these calls was later rescheduled and completed.

⁴ The Federal Defenders reported this call as completed.

⁵ The Federal Defenders reported four of these VTCs as not completed.

⁶ The parties reported that these VTCs were switched to a call because of technical issues.

⁷ MDC reported that one of these VTCs was later rescheduled and completed.

and we are unaware of the outcome for 46 VTCs. We are working with the parties to gather more information about these VTCs.

Again, Federal Defenders report some technical issues with VTCs over the past four weeks.

IV. In-Person Visiting

The parties continue to discuss the tracking of attorney wait times, and the MDC continues to collect and maintain attorney-generated data on wait times. Although incomplete because of limited attorney participation in the data-gathering process, this data is available should the need to track specific wait times arise. The parties continue to discuss ways to efficiently collect and store the data and to increase participation by defense counsel in the necessary record keeping.

The parties continue to discuss issues related to the implementation of procedures regarding legal access. The institution has prepared a draft of a legal access guide which has been the subject of discussion over the past several months. We expect that the guide, when complete, will cover a variety of areas including many that are often the subject of discussion during the mediation calls. The institution has considered various proposals provided by Federal Defenders for inclusion in the legal access guide throughout the drafting process. The guide is now with the institution for final review and we expect it to be finalized soon.

The parties discussed an incident from June 19, 2024, involving the institution's implementation of dress code policies. Multiple zippers on one counsel's pants led to delays while they were reviewed against the dress code. A supervisor was called, but delays led to counsel having to leave before the situation was resolved.

Reports of ongoing technical issues with telephones and VTC equipment in various units are being investigated by staff. Earlier this year, the MDC ordered new headphones for the VTC units, which are currently in use. The MDC is working to ensure that inmates are aware of the availability of headphones. Additionally, the parties discussed recent technical issues with the phone line in SHU during June and July 2024. In response, attorneys have been advised that they should schedule VTCs for inmates in SHU and, in some instances, the institution has assisted attorneys with rescheduling these calls as VTCs as well. The institution will provide an update as soon as possible when the technical issues are resolved.

I will continue to discuss these and other issues with the parties.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

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4

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